

§ 66.32

the control of the source owner or operator as defined in this section.

(e) Except in the case of exemptions based on orders under section 113 (d)(4) or (d)(5) or suspensions under section 110(g), the Administrator may grant an exemption with retroactive effect to the date of the event giving rise to the section 120 predicate order, extension, suspension, or consent decree. In such cases, the exemption from the non-compliance penalty shall run from the date that the basis for the exemption first occurred.

[45 FR 50110, July 20, 1980, as amended at 50 FR 36734, Sept. 9, 1985]

§ 66.32 De Minimis exemptions.

(a) The Administrator may, upon notice and opportunity for public hearing, exempt the owner or operator of any source from a penalty where he finds that a particular instance of non-compliance was *de minimis* in nature and duration.

(b) A petition for an exemption on the ground that the violation described in a notice of noncompliance was *de minimis* in nature and duration may only raise issues related to entitlement to an exemption and shall contain or be accompanied by supporting documentation. Issues relating to entitlement to a *de minimis* exemption not raised in the petition shall be deemed waived.

(c) In ruling upon such a petition, the Administrator shall consider:

(1) The magnitude of the excess emissions and whether the source's non-compliance is recurring or persistent;

(2) The steps the source owner or operator is taking to eliminate the cause of the excess emissions and to minimize such emissions;

(3) Whether any significant economic savings are likely to accrue to the owner or operator of the source as a result of the noncompliance;

(4) The character of the emissions, and their impact on ambient air quality; and

(5) The duration of the violation.

(d) A hearing on a petition for a *de minimis* exemption shall be informal. The hearing shall be scheduled upon notice to the public. Reasonable opportunity to testify and for submission of

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questions by the public to the petitioner shall be afforded. The decision of the hearing officer will be made in writing within a reasonable period of time after the close of the hearing.

§ 66.33 De Minimis exemptions: malfunctions.

(a) The Administrator may, upon notice and opportunity for a public hearing, exempt the owner or operator of a source if he finds with respect to a particular instance of noncompliance, that such noncompliance was *de minimis* in nature and duration, and was caused solely by a sudden and unavoidable breakdown of process or pollution control equipment.

(b) A petition for an exemption on the ground that the violation was *de minimis* and was caused by a sudden and unavoidable breakdown of process or pollution control equipment may only raise issues related to entitlement to an exemption and shall contain or be accompanied by supporting documentation. Issues relating to entitlement to an exemption that are not raised in the petition shall be deemed waived. In making such finding the Administrator shall consider whether:

(1) The violation was *de minimis* in nature and duration within the meaning of § 66.32;

(2) The air pollution control equipment, process equipment, or processes, including appropriate back-up systems, were designed, and have been maintained and operated in a manner consistent with good practice for minimizing emissions;

(3) Repair of the malfunctioning equipment was undertaken and carried out in an expeditious fashion as soon as the owner or operator knew or should have known that the malfunction existed or that applicable emission limitations were being violated or were likely to be violated;

(4) All practicable steps were taken to minimize the impact of the excess emissions (including any bypass) on ambient air quality;

(5) The excess emissions were not part of a pattern indicative of inadequate design, operation, or maintenance;

(6) Off-shift and overtime labor were utilized where necessary to ensure that